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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,477	11/13/2000	Isabelle Preuilh	2365-23	4547

7590

11/21/2002

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 11/21/2002

14

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/709,477

Applicant(s)

PREUILH ET AL.

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 November 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 14 November 2002. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: the ratios of claims 50 and 51 are still vague and indefinite, as they are confusing.

3. ☒ Applicant's reply has overcome the following rejection(s): the 112 rejection over claim 40.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

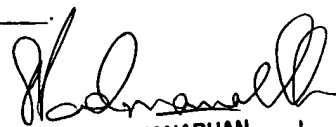
Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 31-33 and 35-61.

Claim(s) withdrawn from consideration: _____

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

11/20/02

Continuation of 5. does NOT place the application in condition for allowance because: a) the 112 and 103 rejections are maintained for reasons of record in the Office Action mailed 5/14/02, Paper No. 10; b) Applicant argues, "the mixture of an anionic surfactant and an amphoteric surfactant is not contemplated by Cameron". This argument is not persuasive. While the combination of an anionic and amphoteric surfactant is not explicitly stated, Cameron teaches anionic and amphoteric surfactants as equivalent surfactants for use in his composition. Thus, one of skill in the art would be motivated to combine the anionic and amphoteric surfactants, because of the expectation of increasing detergency and hence, stability of the composition. Applicant argues, regarding Casmer et al., "There is no indication in this document concerning the use of a propenetrating agent". This argument is not persuasive, as in Col. 10 of Casmer et al., the reference teaches that ethyl alcohol together with polyethylene glycol (propenetrating agents) are carriers for steroidal retinoates. Applicant argues, regarding Klingman et al., "there is no more indication nor motivation in this document leading one of ordinary skill in the art to use either corticoid(s) or retinoid(s) or corticoid(s) and retinoid(s). . . in combination with at least one anionic surfactant, at least on amphoteric surfactant, and at least on propenetrating agent, to solve the technical problem of the invention". This argument is not persuasive. For reasons of record (Paper Nos. 8 and 10), there is motivation to combine the teachings of Cameron, Casmer, and Klingman to arrive at the instant invention. Applicant argues, "Even if one of ordinary skill in the art would have combined Cameron with Casmer and Klingman, they would not have been motivated to combine. . . to make the unexpected improvement in the penetration of the active principle of the composition while also being particularly easy to use and exhibiting good cosmetic properties such as softness, non-greasiness and manageability of hair". This argument is not persuasive, as Applicant has not provided unexpected results. Applicant argues, regarding Cauwet et al., "Nevertheless, this document neither teaches the combination of anionic and amphoteric surfactants with active principles and propenetrating agents as presently claimed". This argument is not persuasive, as Cauwet et al. is relied upon in the rejection for teaching ceramides.



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